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06 UNITED STATES DISTRICT COURT  
07 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

08 MICHAEL A. JACKSON, ) CASE NO. C08-0685-RAJ  
09 Plaintiff, )  
10 v. ) REPORT AND  
11 JULIE A. SPECTOR, et al., ) RECOMMENDATIONS  
12 Defendants. )  
13 \_\_\_\_\_ )

14 Plaintiff, proceeding *pro se*, filed a proposed civil rights complaint under 42 U.S.C. § 1983.  
15 (Dkt. 1.) He names King County Superior Court Judge Julie A. Spector, King County  
16 Prosecuting Attorney Cindi S. Port, and defense attorney Terri A. Pollock as defendants. Plaintiff  
17 alleges a violation of his constitutional rights associated with a plea he entered in July 2005 and  
18 seeks release from his confinement. Plaintiff also presented an application to proceed *in forma*  
19 *pauperis* (IFP). (Dkt. 4.) However, as discussed below, the Court recommends that plaintiff's  
20 application to proceed IFP be denied and this action dismissed without prejudice pursuant to 28  
21 U.S.C. § 1915(e)(2)(B) based upon plaintiff's failure to adequately allege a cause of action under  
22 § 1983.

01 When a prisoner challenges the fact or duration of his confinement, his sole federal remedy  
02 is a writ of habeas corpus, to which the exhaustion requirement applies. *Preiser v. Rodriguez*, 411  
03 U.S. 475, 489-90 (1973); *Young v. Kenny*, 907 F.2d 874, 875 (9th Cir. 1990). Further, a civil  
04 rights complaint under § 1983 cannot proceed when “a judgment in favor of the plaintiff would  
05 necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be  
06 dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been  
07 invalidated.” *Heck v. Humphrey*, 512 U.S. 477, 487 (1994). As more recently stated by the  
08 United States Supreme Court: “[A] state prisoner’s § 1983 action is barred (absent prior  
09 invalidation)--no matter the relief sought (damages or equitable relief), no matter the target of the  
10 prisoner’s suit (state conduct leading to conviction or internal prison proceedings)--if success in  
11 that action would necessarily demonstrate the invalidity of confinement or its duration.” *Wilkinson*  
12 *v. Dotson*, 544 U.S. 74, 81-82 (2005).

13 In this case, plaintiff presents a challenge to the fact and duration of his confinement and  
14 a finding in his favor and award of the relief sought would necessarily demonstrate its invalidity.  
15 He makes no allegation or showing that his confinement has been invalidated or impugned in any  
16 respect. Accordingly, plaintiff’s claims are not cognizable under § 1983.<sup>1</sup>

17 A district court should not convert a defective § 1983 claim into a petition for a writ of  
18 habeas corpus unless it is clear that the plaintiff intends to bring a habeas petition. *Trimble v. City*  
19 *of Santa Rosa*, 49 F.3d 583, 586 (9th Cir. 1995). Instead, the district court should dismiss the  
20 § 1983 claims without prejudice. *Id.* Therefore, the Court recommends that plaintiff’s application

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22 <sup>1</sup> Because plaintiff’s claims are not cognizable for the reason described above, the Court declines to address other deficiencies in plaintiff’s proposed complaint as to named defendants.

01 to proceed IFP be denied and his § 1983 action be dismissed without prejudice. pursuant to §  
02 1915(e)(2)(B). A proposed order accompanies this Report and Recommendation.

03 DATED this 13th day of May, 2008.

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05 Mary Alice Theiler  
06 United States Magistrate Judge